

1 SAN FRANCISCO POLICE DEPARTMENT

2 POLICE COMMISSION

4 - - - - -  
5 IN RE: )  
6 FIREARM DISCHARGE REVIEW )  
7 BOARD )  
8 - - - - -

10 AUDIO TRANSCRIPTION OF  
11 THIRD QUARTER, 2019  
12 FIREARM DISCHARGE REVIEW BOARD  
13 FILE: FDRB 3Q 2019  
14 THURSDAY, SEPTEMBER 26, 2019

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1                   THURSDAY, SEPTEMBER 26, 2019; 10:24 A.M.

2

3                   SGT. CAMPBELL: Ready?

4                   UNIDENTIFIED SPEAKER: Ready.

5                   SGT. CAMPBELL: This is the Third Quarter  
6 2019 San Francisco Police Department Firearm Discharge  
7 Review Board. Today's date is Thursday, September 26,  
8 2019, at 1024 hours. This meeting is taking place at  
9 police headquarters, 1245 3rd Street, Room 3111.

10                  For roll call I'd ask can we please go around  
11 the room and state your name and your assignment.

12                  UNIDENTIFIED SPEAKER: Yes.

13                  SGT. OSPITAL: Sergeant Paul Ospital from  
14 Internal Affairs Division, OIST.

15                  SGT. TACCHINI: Sergeant James Tacchini,  
16 internal affairs, OIST.

17                  SGT. FRANCO: Sergeant Cristina Franco,  
18 Internal Affairs Division.

19                  LT. WALL: Lieutenant Kathryn Wall, risk  
20 management.

21                  DEPUTY CHIEF MANNIX: Deputy Chief Ann  
22 Mannix, special operations.

23                  DEPUTY CHIEF YEE: Greg Yee, deputy chief,  
24 Administration Bureau.

25                  DEPUTY CHIEF MCEACHERN: Deputy Chief Greg

1           McEachern, field operations.

2           DEPUTY CHIEF ALI: Mikail Ali, deputy chief,  
3        Airport Bureau.

4           LT. NEVIN: Lieutenant Mike Nevin, training  
5        division.

6           SGT. BUGARIN: Sergeant Justin Bugarin,  
7        training division.

8           OFFICER BOJEEN: Officer Bojeen, range.

9           MS. MARION: Samara Marion, Department of  
10      Police Accountability, director of policy.

11          SGT. CAMPBELL: Sergeant Jayme Campbell,  
12      police commission secretary.

13          SGT. YOUNGBLOOD: Sergeant Stacey Youngblood,  
14      police commission.

15          SGT. CAMPBELL: All right. Line item one:  
16      Discussion, review and report to the chief of police  
17      regarding the following officer-involved weapon  
18      discharge: OIS 17-006. Action item.

19          The Firearm Discharge Review Board may  
20      consider all or part of item one in closed session  
21      pursuant to Government Code Section 54957(b)(1) and SF  
22      Administrative Code Section 67.10(b), in which case,  
23      item 1(a): Public comment on all matters pertaining  
24      to closed session.

25          Is there public comment?

1            Seeing none, line item 1(b): Vote on whether  
2 to hold closed session. Action item.

3            UNIDENTIFIED SPEAKER: Make a motion to have  
4 closed session.

5            UNIDENTIFIED SPEAKER: Second.

6            SGT. CAMPBELL: On the motion to go into  
7 closed session, all in favor?

8            MULTIPLE SPEAKERS: Aye.

9            SGT. CAMPBELL: All opposed?

10          Hearing none, motion passes.

11          All right. Line item 1(c): Convene closed  
12 session pursuant to Government Code Section  
13 54957(b)(1) and SF Administrative Code Section  
14 67.10(b). 1(c)(1): Presentation of OIS 17-006, which  
15 is discussion and possible action, being presented by  
16 Sergeant Ospital from the Internal Affairs Division  
17 and Acting Captain Waaland as the commanding officer.

18          SGT. OSPITAL: I'm Sergeant Paul Ospital.  
19 I'm here to present to the Firearm Discharge Review  
20 Board OIS case 17-006.

21          This incident occurred on Wednesday,  
22 November 1st, 2017, just after midnight. Location of  
23 occurrence is 77 Diamond Street. Listed below is the  
24 case number and the CAD number for this incident.

25          Just a brief -- before we continue on, this

1       is just a summarization of all the information that  
2       you've already been given.

3                 This is our involved member, Officer Samuel  
4       Fung. Date of hire in the department: February 28th  
5       of 2005. At the time of the incident he had 12 years  
6       experience and his assignment at the time was the  
7       crime scene investigations unit.

8                 This evening he was working -- he was  
9       detailed to the Halloween festivities in the Castro  
10      District. This was all for Halloween night. He  
11      was de- -- he normally works a day watch shift, I  
12      think 8 to 1800. But this evening he was detailed  
13      from 1500 to 01 and his call sign was 3 David 91 Boy.  
14      Uniform that he had was Class B with service cap and  
15      the rest of his uniform.

16                 This is our suspect: **Redactio**  
17      32 years old, Hispanic male, 5'11, 155 pounds, brown  
18      and brown. Extensive criminal history: Narcotics,  
19      gangs. Obviously you can see firearms convictions,  
20      assault with a deadly weapon. And it should be noted  
21      as of January 18th of this year he was sentenced in  
22      this case for 15 years to life.

23                 This is the scene overview. It's kind of  
24      hard to see. You see it easier probably on your  
25      handout. That's 77 Diamond. They're on fixed post

1 here on 18th and Collingwood when they were flagged  
2 down and that's the direction they had to go.

3 This is right in front of 77 Diamond Street.  
4 This is the vehicle that they were alerted to and  
5 directed to regarding a possible auto boost.

6 This is Officer Hintzen's clothing that was  
7 taken off of him right after the incident. This is  
8 Officer Hintzen's weapon. As you can see, his radio.  
9 And if you look closely, you can see where the damage  
10 is to his gun where the actual handle right there is  
11 shattered.

12 This is the location where the suspect was on  
13 the ground after the incident, just obviously an  
14 overview. And this is a close-up. This is the  
15 suspect's weapon that was at the scene.

16 Just to kind of give you a picture where he  
17 came from and where this all started. The vehicle is  
18 right up here and then this is the track that  
19 Officer Fung had to come down and then he ended up  
20 behind the red car for cover so he wouldn't be shot.

21 Scene of the incident. Officer Fung and his  
22 partner, Officer Hintzen, were flagged down regarding  
23 a possible auto burglary on the unit block of Diamond  
24 Street. The officers were directed by the reportee to  
25 a gray-blue Chrysler with paper plates parked in front

1 of the above address.

2           A male and female subject were standing near  
3 the car as the officers approached. [Redaction INdex #2] was  
4 seated in the rear passenger seat with the door open.  
5 As they approached, [Redaction Index #2] who was inside the car,  
6 closed the door and the other two subjects that were  
7 standing by the car started to walk away as they  
8 approached. The officers broadcast suspicious vehicle  
9 info. They let dispatch know.

10           The officers as they approached up ordered  
11 [Redaction Index #2] to get out of the car. He was uncooperative  
12 and at some point he climbed from the back seat to the  
13 front driver's seat.

14           Officer Hintzen was positioned on the  
15 driver's side of the vehicle and Officer Fung was  
16 covering from the passenger side. [Redaction INdex #2] at some  
17 point was heard -- was heard saying "Fuck it." I'm  
18 quickly -- he quickly exited the side door, opening  
19 fire on Officer Hintzen.

20           Officer Hintzen retreated and began to draw  
21 his weapon. He was struck multiple times.  
22 Officer Hintzen can no longer use his dominant hand or  
23 his firearm. He radioed that he had been shot.

24           The discharge. [Redaction Index #2] exited the vehicle  
25 and turned his attention to Officer Fung. [Redaction Index #2]

1 pointed his gun and started shooting at Officer Fung.  
2 Officer Fung immediately ducked behind the car, took  
3 cover, and retreated to try to create time and  
4 distance and while doing that returned fire to

5

6 [Redaction Index #2] pressed the attack. Even though he  
7 had a clear avenue to go northbound towards Market  
8 Street, he continued towards Officer Fung, charging  
9 towards him and shooting while still trying to follow  
10 him down the sidewalk as he was retreating from him.

11                   Officer Fung returned fire. Officer Fung  
12 activated his body-worn camera during the shootout or  
13 later on while making a magazine change while he was  
14 behind cover. [Redaction Index #2] was hit in the stomach and  
15 collapsed on the street. Officer Fung advised  
16 dispatch of the officer-involved shooting and  
17 requested units and assistance.

18                   This is a brief timeline. Obviously you can  
19 see this all went down in a couple minutes. This all  
20 went quick. I mean, they probably could have radioed  
21 in sooner as they first came up. They didn't really  
22 acknowledge dispatch right away, until they realized  
23 that this guy wasn't complying. So it could have been  
24 a little bit longer but pretty much from the time they  
25 put out no plates on the car and the description to

1 the shoot, it was all within like a two-minute period.

2 Post-discharge. Officer Fung handcuffed the  
3 suspect with assistance with the arriving officers  
4 that were coming on scene and he looked for his  
5 partner. Redaction Index #2 was taken into custody and first aid  
6 was initiated. Lieutenant Banta arrived on scene and  
7 assumed command.

8 Arriving units began rendering aid to  
9 Officer Hintzen. Officer Hintzen, unfortunately, was  
10 stuck -- he was struck in the stomach below his  
11 ballistic vest. The bullet passed through his right  
12 hand and struck his firearm. And one bullet passed  
13 through his breast -- breast pocket of his uniform and  
14 shattered his cellphone.

15 Redaction Index #2 had a gunshot wound to the stomach.  
16 Officer Hintzen and Redaction Index #2 were separately  
17 transported to San Francisco General and notifications  
18 were made and immediately criminal administrative  
19 investigations were initiated. CSI responded and  
20 processed the scene.

21 Criminal investigation was initiated and  
22 Sergeant Scott Warnke led the criminal investigation.  
23 Members from the Office of the District Attorney  
24 responded and initiated their own parallel  
25 investigation and participated in the interviews.

1                   Oh, no.  
2                   Administrative investigation.  
3                   Sergeants Crudo, Sergeant Franco and then sergeant,  
4                   now lieutenant sergeant -- Lieutenant Torres responded  
5                   to the scene of the incident. Sergeant Crudo was --  
6                   took the lead on this investigation and members from  
7                   the Department of Police Accountability responded and  
8                   initiated their own parallel investigation.

9                   CSI processing. CSI responded. They  
10                  collected some of the following evidence: A Smith &  
11                  Wesson 9 mm that belonged to [Redaction Index #2] They collected  
12                  the two weapons from the officers. Uniform from  
13                  Officer Hintzen. They collected 17 9 mm casings that  
14                  were from [Redaction Index #2] gun and 16 spent .40 caliber which  
15                  was from Officer Fung. There were five broken pieces  
16                  from his -- from Officer Hintzen's firearm that was  
17                  collected. And bullet fragments collected from  
18                  Officer Hintzen's right hand and lower back were  
19                  seized at SFGH as well as fragments from [Redaction Index #2]  
20                  left elbow and buttocks was collected there as well.

21                  Following items were collect- -- were  
22                  received by the criminalistics laboratory on  
23                  November 14, 2017: Both department members' firearms  
24                  were collected. Suspect's -- or [Redaction Index #2] weapon was  
25                  collected. His serial -- the serial number on the

1 weapon was obliterated. Officer Fung's weapon was  
2 examined, found to be functional using the submitted  
3 magazines. The trigger pull was found to be within  
4 manufacturer specifications. The 9 mm was examined as  
5 well, tests were fired and compared to NIBIN database  
6 in the crime lab open case file, negative results.  
7 Officer Hintzen's department-issued weapon was not  
8 capable of being tested due to the damage.

9 Per the criminalist examining the fragments  
10 that were taken from Hintzen and Redaction Index #2 the bullet  
11 taken from Hintzen's -- Officer Hintzen's shirt pocket  
12 was sent to the crime lab to be examined and it was  
13 determined that it was fired from the 9 mm handgun of  
14 Redaction Index #2 Fragment from Officer Hintzen's right hand  
15 and lower back were examined by the lab and it was  
16 determined that it was fired from Officer Fung's  
17 weapon.

18 Post-discharge debriefing. CIRT debrief with  
19 the behavioral science unit was on November 3rd, 2017.  
20 And the modified force options academy and firearms  
21 debrief at the range were on November 7th, 2017.

22 Return to duty panel chaired by Deputy Chief  
23 Moser at the time, now assistant chief, convened on  
24 Wednesday, November 8th, 2017. After considering the  
25 preliminary findings of the incident and the status of

1      Officer Fung's post-discharge debriefings it was  
2      unanimously recommended returning Officer Fung to  
3      duty.

4                 The recommendation of the return to duty  
5      panel was forwarded to Chief William Scott. On  
6      November 8th, Chief Scott advised the San Francisco  
7      Police Commission that he concurred with the return to  
8      duty panel's recommendation to return Officer Fung to  
9      duty.

10                Homicide investigative conclusion. This was  
11     conducted, as I said earlier, by Sergeant Warnke and  
12     he concluded the following: Officer Shawn Hintzen did  
13     not fire his weapon during the incident.  
14                Officer Samuel Fung's use of deadly force, firing his  
15     department-issued firearm at an attempted murder  
16     suspect that was actively shooting at him and in the  
17     directions of civilians, was legally justified as it  
18     was conducted in self-defense and the defense of  
19     others.

20                The district attorney. The district  
21     attorney's office report was completed on July 24th,  
22     2018. And their conclusion: After a thorough review  
23     of this matter, we are declining to file criminal  
24     charges against Officers Fung and Hintzen.

25                But on May 3rd of 2019 it was amended and

1       they forwarded a report saying the declination letter  
2       dated July 24th erroneously listed Officer Hintzen,  
3       who did not use deadly force and was wounded by  
4       gunfire during the incident. Officer Fung, the only  
5       officer who used deadly force, was the sole subject of  
6       that OIS investigation and as you know we have  
7       declined to file any charges against Officer Fung  
8       related to the OIS.

9                 Administrative investigation was considered.  
10       The administrative investigation considered the  
11       criminal and administrative interviews, criminal  
12       investigative findings and conclusions, collected  
13       evidence and available reports and analysis pertaining  
14       to this incident. A compelled administrative  
15       interview was conducted with Officer Samuel Fung by  
16       Sergeant Crudo. Officer Hintzen provided a voluntary  
17       statement to homicide which was taken into account in  
18       the administrative investigation (unintelligible).

19                 Officer Fung's interview with IA.  
20       Officer Fung stated he was detailed the night of the  
21       incident and was assigned to Mission command for  
22       Halloween events in the Castro with his partner  
23       Officer Hintzen. They were assigned a fixed post at  
24       18th and Collingwood when approached by an older  
25       gentleman who advised that someone was breaking into a

1 car around the corner.

2           They were directed by the gentleman to the  
3 car. As they were approaching, Officer Fung observed  
4 the rear passenger door and legs hanging halfway out  
5 of the vehicle and two individuals standing next to  
6 the car on the sidewalk.

7           The person that flagged them down regarding  
8 the incident pointed out the Chrysler 300 as the  
9 vehicle being broken into that Redaction Index #2 legs were  
10 hanging out of. Officer Fung stated he approached the  
11 car to investigate to determine if a crime had even  
12 been committed. As the officers approached the  
13 vehicle, the rear passenger door closed.

14           Doesn't say it in here, but as Officer Fung  
15 approached on the passenger side, Officer Hintzen went  
16 towards the trunk and then approached the vehicle on  
17 the driver's side. So he was almost like in the  
18 street as they started coming up.

19           Officer Fung illuminated the vehicle and  
20 startled Redaction Index #2 who was rolling a marijuana joint.  
21 He saw on Redaction Index #2 lap, he stated in his interview,  
22 there was a brown piece of paper and you could see  
23 marijuana on the piece of paper as he was rolling it  
24 up. And even in the homicide search warrant there  
25 were gallon-size bags. They brought bags of marijuana

1 into the car that they seized. So he had it in the  
2 car.

3           Officer Fung and Hintzen started giving  
4 orders to [Redaction Index #2] to exit the car. He replied to them  
5 that he did not have the keys to the vehicle.  
6 Officer Fung while walking to the front of the vehicle  
7 because he wanted to get a plate observed [Redaction Index #2]  
8 climb from the back seat to the front driver's seat.  
9 Into the driver's seat, I should say.

10          And as he was walking to the front of the car  
11 and seeing [Redaction Index #2] get into the driver's seat, he  
12 noticed him fiddling around with the buttons on the  
13 dashboard, which set off the car alarm and the lights  
14 were going off. And at that point now they're pretty  
15 much suspicious now that this guy doesn't have the key  
16 or something -- there's more to it than him just  
17 sitting in the car.

18          Officer Fung continued to walk around the  
19 driver's side of the car, passing Officer Hintzen. At  
20 one point -- at that point there is when he noticed  
21 the actual address of the -- where the car was at and  
22 gave it out there.

23          So he continued past Officer Hintzen, walked  
24 towards the rear of the car to get a plate, and he  
25 noticed again there were paper plates on the back of

1 the car too. So at that point he observed the plates  
2 were paper as well, notified dispatch, and actually  
3 gave a description of the Chrysler 300 in front of the  
4 address and that it was occupied.

5 Officer Fung moved towards the front  
6 passenger door after giving that description and was  
7 keeping his eyes on [Redaction Index #2] as well as  
8 Officer Hintzen, who continued to give orders to  
9 [Redaction Index #2] to exit, who wasn't complying.

10 Officer Fung said his view was slightly  
11 obstructed due to the A-pillar on the front as he was  
12 trying to keep an eye on [Redaction Index #2] too and keep an eye  
13 on Officer Hintzen but noticed -- he believed  
14 Officer Hintzen had something red in his hand and he  
15 thought he had his pepper spray out just 'cause the  
16 label's red and he -- that's what he thought was in  
17 his hand.

18 As he sees the -- believe something red in  
19 his hand, all of a sudden he hears two pops. They're  
20 like muffle sounds. He thought Officer Hintzen had  
21 broke the window with the pepper spray. And then as  
22 soon as he hears the two pops, he sees Officer Hintzen  
23 back away from the door and all of a sudden [Redaction Index #2]  
24 emerges from the car. And as he gets out of the  
25 driver's seat, comes across over the top of the car

1 and points the gun and he sees the barrel of the gun  
2 facing at his face, towards his head.

3           Officer Fung in fear for his life immediately  
4 ducked behind the vehicle and went for his weapon.  
5 Officer Fung said [Redaction Index #2] started shooting at him.  
6 Officer Fung while running for cover unholstered his  
7 weapon and was returning fire. Officer Fung said  
8 [Redaction Index #2] continued to advance towards him, shooting.

9           And that's the scene where I was telling you  
10 initially for that whole sidewalk portion he ran all  
11 the way down and [Redaction Index #2] who came off -- came out  
12 from the driver's side, actually came onto the  
13 sidewalk and was still shooting at him as he was  
14 trying to get behind the car and returning fire at the  
15 same time.

16           Officer Fung ran behind the parked car for  
17 cover to the ground and attempted to get up but fell  
18 again. He lost sight of [Redaction Index #2] at that point.  
19 Officer Fung realized he went empty and reloaded while  
20 behind the car.

21           After reloading, Officer Fung stood up and  
22 peeked over the car to see where [Redaction Index #2] was. At that  
23 point he still had no idea where he was, if he was on  
24 the sidewalk now or back on the street. Officer Fung  
25 stated in his interview he was not sure if he had

1 fired his weapon after reloading or his sequence of  
2 fire.

3 Officer Fung heard [Redaction Index #2] moaning and  
4 observed him on the ground in the street in front of  
5 that red car that was depicted in that picture  
6 earlier. Officer Fung maintained a visual of [Redaction Index #2]  
7 notified dispatch of the OIS, requested help and  
8 stating that the suspect was down.

9 Units arrived, assisted in handcuffing  
10 [Redaction Index #2] Officer Fung immediately looked for  
11 Officer Hintzen, who was leaning over the trunk of the  
12 car, the suspic- -- the Chrysler 300, over the trunk  
13 area of the vehicle. He could not tell at that time  
14 if Officer Hintzen -- what Officer Hintzen's injuries  
15 were but an ambulance was requested for  
16 Officer Hintzen and [Redaction Index #2] as well.

17 Officer Fung notified Lieutenant Banta, who  
18 arrived on scene, that he was involved in the OIS.  
19 And Officer Fung said he was removed from the scene  
20 and taken to Mission Station where he was photographed  
21 by CSI and his weapon was seized.

22 Policies in review. In this matter the  
23 findings in this officer-involved shooting as  
24 presented here were reviewed in context of the  
25 department policy with particular attention to

1 Department General Order 5.01, Department General  
2 Order 8.11 and Department General Order 10.11.

3 Conclusion. Based on the preponderance of  
4 evidence, Officer Samuel Fung discharged his  
5 department-issued weapon on November 1st, 2017, in  
6 defense of self and another. Officer Samuel Fung's  
7 use of his firearm was in accordance with the  
8 specifications set forth in the applicable Department  
9 General Order 5.01. Officer Fung's use of his  
10 body-worn camera was in accordance with specifications  
11 set forth in the applicable Department General Order  
12 10.11, body-worn camera.

13 However, though, since then, the order's been  
14 changed regarding the activation of when to activate  
15 it. If this were to happen now, he would be out of  
16 policy, that he should have activated it sooner.

17 Officer Samuel Fung. The recommendation to  
18 the Firearm Discharge Review Board: Officer Samuel  
19 Fung on November 1st, 2017, to be found in policy.

20 UNIDENTIFIED SPEAKER: Any discussion?

21 UNIDENTIFIED SPEAKER: I have a question  
22 relative to page 14. The interview -- Officer Fung  
23 doesn't characterize his retreat as creating time and  
24 distance. Yet on bullet point four we have -- on  
25 page 14.

1 UNIDENTIFIED SPEAKER: I'm sorry.

2 UNIDENTIFIED SPEAKER: Yeah. Page 14. So  
3 bullet point four we indicate that Officer Fung  
4 retreated to create time and distance.

5 UNIDENTIFIED SPEAKER: Yes.

6 UNIDENTIFIED SPEAKER: And return fire at  
7 [Redaction Index #2] My concern is the use of time and distance  
8 relative to an instant where a person's actively  
9 trying to kill you. I don't think we want to create a  
10 mind-set nor have a narrative that we have any  
11 expectation whatsoever of creating -- needing to  
12 create time and distance.

13 So if this is not something that he  
14 attributed to the shooting, I would request that  
15 either, one, in the future we don't do this, or  
16 secondly, that we correct this if this is the  
17 investigative narrative.

18 UNIDENTIFIED SPEAKER: It used to be  
19 tactically retreat.

20 UNIDENTIFIED SPEAKER: What's that?

21 UNIDENTIFIED SPEAKER: Tactically retreat  
22 (unintelligible).

23 UNIDENTIFIED SPEAKER: Whatever it is, I  
24 mean, it's he's retreating to keep from getting  
25 killed, in short.

1           UNIDENTIFIED SPEAKER: Yes.

2           UNIDENTIFIED SPEAKER: As opposed to --

3           UNIDENTIFIED SPEAKER: Creating time and  
4 distance.

5           UNIDENTIFIED SPEAKER: -- creating time and  
6 distance under the narrative of CIT where you have a  
7 person. So I think we kind of want to -- I just want  
8 to make sure we keep those two things separate so that  
9 in a situation like this an officer doesn't think  
10 whatsoever that they have any obligation while  
11 somebody's trying to actively kill them to create time  
12 and distance.

13          UNIDENTIFIED SPEAKER: I think what he was  
14 trying to say I can only assume but they were -- it  
15 was so close. I mean, when he popped out of the car,  
16 he's literally on the other side on the door.

17          UNIDENTIFIED SPEAKER: Yeah.

18          UNIDENTIFIED SPEAKER: And he's like seven  
19 feet away. I think what he was trying to do is just  
20 get away, not nec- --

21          UNIDENTIFIED SPEAKER: He tactically  
22 retreated is what he did.

23          UNIDENTIFIED SPEAKER: But my point is, in  
24 the interview, the interview summary, that  
25 characterization is not there.

1           UNIDENTIFIED SPEAKER: Just say wording.

2           UNIDENTIFIED SPEAKER: My request is if this  
3 is the narrative of the investigator, that we change  
4 the narrative in the future, we change the narrative  
5 now.

6           UNIDENTIFIED SPEAKER: Okay.

7           UNIDENTIFIED SPEAKER: Because we do not want  
8 to have a false narrative about when time and distance  
9 appropriate. Time and distance is not appropriate  
10 when somebody's trying to kill you.

11          UNIDENTIFIED SPEAKER: Correct.

12          UNIDENTIFIED SPEAKER: (Unintelligible.)

13          UNIDENTIFIED SPEAKER: How did you want to  
14 proceed? Did you want us to...

15          UNIDENTIFIED SPEAKER: We're gonna just --  
16 we're not gonna go (unintelligible).

17          UNIDENTIFIED SPEAKER: Discussion? Okay.

18          UNIDENTIFIED SPEAKER: I have a minor point  
19 that has nothing to do with the in policy finding  
20 concerning use of force. Our agency is in full  
21 agreement.

22          It's minor. It's about the body-worn camera.  
23 And the recommendation is that it be in policy. And  
24 when I look at the policy, this is before the chief  
25 issued the department bulletin that is far more

1 explicit about when officers have to activate. But  
2 the policy at the time said that all -- and it is the  
3 DGO. It's in effect right now. All on-scene members  
4 equipped with a body-worn camera shall activate their  
5 body-worn camera equipment in the following  
6 circumstances. Number one is detentions and arrests.  
7 And number two is consensual encounters where a member  
8 suspects that a citizen may have knowledge of a  
9 criminal activity, a suspect, witness or victim.

10           This is a circumstance where these two  
11 officers were approached by a citizen who said that  
12 citizen had observed criminal conduct and was asking  
13 for the officers to then look at what he perceived as  
14 an ongoing auto burglary or something that was awry, a  
15 suspicious circumstance with a car.

16           So when you look at the body-worn camera  
17 policy, these officers are approached by an individual  
18 giving them information about criminal conduct, asking  
19 that it be reviewed, investigated. The officers are  
20 then going to the car with the expectation that  
21 they're gonna make a detention, at a minimum, because  
22 they've been asked by an individual to investigate a  
23 suspicious occurrence. And the facts that they knew  
24 at that time rose to the level of reasonable  
25 suspicion.

1           So when I look at the policy at that time, I  
2 see that there was a mandate, that they're -- they're  
3 on scene now, they've got a citizen giving them  
4 information about an investigation. It's likely --  
5 it's not just likely, they're gonna make a detention.  
6 There's individuals in the car. That -- in my mind,  
7 that meets the requirements.

8           I understand, you know, in the scheme of  
9 conduct and the nature of this case, of course, again,  
10 our agency is in agreement with it's in policy. I see  
11 this as a minor aspect. But I think it's important  
12 because the need to have -- especially an  
13 officer-involved shooting. When you don't know at the  
14 beginning it's gonna escalate into an officer-involved  
15 shooting, the body-worn camera video it overwhelmingly  
16 exonerates officers.

17           So I would hope that the message from the top  
18 down is put on and activate your camera immediately,  
19 especially in these kind of circumstances where you  
20 don't know what the end result is. So when I look at  
21 the DGO I see that it is exactly this kind of  
22 circumstance and that the officers should have had  
23 their body-worn camera activated.

24           So I just, you know, provide that, ask that  
25 there be reconsideration of that. I respect that you

1 might have a completely different opinion but I just  
2 would ask for, you know, analyzing the statute or the  
3 DGO at the time and, you know, a reconsideration as to  
4 why -- why ultimately the decision is that it's in  
5 policy.

6 UNIDENTIFIED SPEAKER: I have a couple  
7 questions --

8 UNIDENTIFIED SPEAKER: Sure.

9 UNIDENTIFIED SPEAKER: -- related to that.

10 Do -- do you have a copy of the DGO that you  
11 can put up?

12 UNIDENTIFIED SPEAKER: No.

13 UNIDENTIFIED SPEAKER: I can like elaborate a  
14 little bit on the body-worn camera policy. So the  
15 bulletin did not change the circumstances in which you  
16 turn on your body camera, it just clarified when you  
17 turned on that camera. So this was a required  
18 circumstance and just kind of at what point the  
19 cameras were activated. And that's why the bulletin  
20 was released. Because, you know, it was unclear to  
21 people when they were supposed to -- did they need to  
22 get all the information that a crime was occurring  
23 before they know that the person's reporting a crime  
24 to them? You know, just they do it right away. So  
25 that -- that's why we released the bulletin.

1           If they had -- he said if this had happened  
2 after the bulletin had come out, then we would have  
3 found them out of policy per the bulletin. But the  
4 circumstances in which you turn your camera on did not  
5 change based on the bulletin, just when.

6           UNIDENTIFIED SPEAKER: What was the time  
7 between when they were flagged down and they came in  
8 contact with Redaction Index #2 roughly?

9           SGT. OSPITAL: It was a few minutes. I mean,  
10 'cause it's hard to say 'cause they never went out  
11 over the air from the time they were in contact at  
12 18th and Collingwood.

13           UNIDENTIFIED SPEAKER: Where were they when  
14 they were contacted?

15           SGT. OSPITAL: 18th, 18th and Collingwood,  
16 sir. They were at a fixed post. So it was a block  
17 and a half.

18           UNIDENTIFIED SPEAKER: Block and a half?

19           SGT. OSPITAL: Block, block and a half.

20           UNIDENTIFIED SPEAKER: Okay.

21           UNIDENTIFIED SPEAKER: Chief, I have a copy  
22 of the DGO.

23           UNIDENTIFIED SPEAKER: Can I see it  
24 (unintelligible)?

25           UNIDENTIFIED SPEAKER: Yes.

1                   UNIDENTIFIED SPEAKER: For my -- from your  
2 presentation it appears at some point that the  
3 officers approach -- even though they were flagged  
4 down and provided some information, they did not have  
5 a belief that maybe there was some nefarious action  
6 going on.

7                   SGT. OSPITAL: Correct. And they even -- in  
8 the interview Officer Fung said he didn't initially  
9 turn on his camera 'cause he said that from his past  
10 experience -- he obviously has some time in the  
11 business -- that people come up and say there's a  
12 crime going on but really not.

13                  UNIDENTIFIED SPEAKER: Yes.

14                  SGT. OSPITAL: And then as they approached,  
15 he even stated in his interview that normally if  
16 somebody's gonna break into a car, steal a car,  
17 they're gonna break the window, take it and run. When  
18 he saw somebody sitting in the car, they didn't know,  
19 well, that could just be somebody hanging out in their  
20 car or sleeping out of the car. They didn't -- he  
21 didn't know.

22                  And then once they approach and he shut the  
23 door and started, you know, not complying, then that's  
24 when they figured there was more to it than just him  
25 sitting in the car.

1                   UNIDENTIFIED SPEAKER: So follow-up question  
2 to that. Ms. Marion, in light of the intentions  
3 behind the officers relative to -- and I can see this  
4 happening myself where somebody points out, hey,  
5 this -- this male over here is doing X, Y and Z, we  
6 think it's, you know, a crime, but in your mind-set  
7 you see that this is probably somebody minding their  
8 own business until you further engage, does that  
9 influence your thoughts whether or not this is out of  
10 policy?

11                  MS. MARION: My understanding was that there  
12 was a discussion with this gentleman where he said "I  
13 think there's an auto burglary in process" and gave  
14 some facts as to why he thought that.

15                  UNIDENTIFIED SPEAKER: Yeah.

16                  MS. MARION: He gave a description of the  
17 individuals and said that he didn't believe -- he  
18 didn't believe that these individuals were -- that  
19 these individuals were not known to be associated with  
20 this vehicle, that they were inside the vehicle, that  
21 he believed that they were wrongfully inside the  
22 vehicle, described them, and that then he walked with  
23 the officers.

24                  I think under both exceptions, here we've got  
25 an individual who's saying I -- as a citizen saying:

1 I believe I've witnessed a crime --  
2 UNIDENTIFIED SPEAKER: Sure.  
3 MS. MARION: -- and I'm asking your  
4 assistance. I think under that -- under number two it  
5 says if you've got a consensual encounter with someone  
6 who's describing criminal activity to put on body cam.  
7 So I think at that moment they could have tapped on  
8 the body cam.

9 They're taking a statement from this  
10 individual who's describing criminal conduct. They're  
11 walking with him and then they're going to the car.  
12 And then when they -- when they're in -- when they're  
13 looking at the car they're then seeing -- like  
14 Officer Fung sees, wait. He's trying to look at the  
15 license plate, the license plate, there is no plate.  
16 He's seeing conduct that has some red flags that --  
17 and especially then the individual inside saying "I  
18 don't have the keys." Well, if he doesn't have the  
19 keys, this man's reporting an auto burglary, there's  
20 red flags going on.

21 So throughout those two minutes, three  
22 minutes, I believe there's more red flags that would  
23 indicate put on my body cam because this is getting  
24 more and more problematic in terms of conduct. And  
25 that's why you have a body cam.

1           So I just think there is -- there was time,  
2 they're on scene. I think it falls within -- within  
3 the DGO at that time.

4           UNIDENTIFIED SPEAKER: I agree. I just -- my  
5 thinking is that the officers expressed they did not  
6 connect those dots. And I think that's a  
7 reasonableness in not connecting. Not everybody who's  
8 identified as a suspect in a crime is actually  
9 committing a crime. We recognize that.

10          So with that said, from that viewpoint, that  
11 vantage point, I think the officers are engaging from  
12 a standpoint of this is just a regular citizen in  
13 their car, minding their own business, and I'm going  
14 to go look into it, although I don't really believe  
15 there's any merit here.

16          And that's my concern about -- you know, in  
17 hindsight, absolutely, we got it. From the stan- --  
18 from a fresh standpoint, I can see all the time  
19 that -- that being the level of engagement we want our  
20 officers to have. Not necessarily to, you know, take  
21 everybody on as a bad person just because somebody  
22 else identified them as such. Otherwise we'd be  
23 arresting, you know, (unintelligible) things like  
24 that.

25          UNIDENTIFIED SPEAKER: I would agree. I

1 mean, that's -- as Captain Waaland's mentioned, back  
2 in 2016 the DGO does say that the officer shall  
3 activate it but it doesn't say -- doesn't really  
4 clarify when. I mean, I believe Officer Fung did turn  
5 it on at a certain point. So, you know, based on his  
6 training and experience, I mean, it was his  
7 perception, his reality at the time of his engagement  
8 of what was going on. But he did turn it on to comply  
9 with the policy as stated back in 2017.

10           And I know now that with the bulletin that  
11 clarifies when an officer should turn it on, in the  
12 beginning. We made that adjustment. But I think  
13 based on the time -- the date and time that this  
14 occurred, the current policy in place, you know, it  
15 appears Officer Fung -- Officer Fung did comply with  
16 the DGO as drafted and as what that was in effect at  
17 the time of this incident.

18           UNIDENTIFIED SPEAKER: His perception was  
19 that Officer Hintzen had his Mace in his hand when in  
20 fact I think that's when he was being shot in the  
21 hand. You know, people's perception of what happens  
22 and then us in 20-20. But at the time he -- when the  
23 officer was getting shot he didn't even perceive that  
24 that was what was happening until the gun was pointed  
25 at him. So it's hard for us to say what his

1 perceptions were.

2           We recognize -- and then obviously when's  
3 that going on, when's that going on is really hard to  
4 turn on your camera. So that's why we said, hey,  
5 let's turn it on before we get to that point. So  
6 we -- we did make the adjustment. We recognized there  
7 was a problem.

8           UNIDENTIFIED SPEAKER: Did Officer Hintzen  
9 have pepper spray? He didn't have any pep- -- or he  
10 did or did not?

11           SGT. OSPITAL: I think he had it on his belt.

12           UNIDENTIFIED SPEAKER: So it wasn't in his  
13 hand.

14           SGT. OSPITAL: We don't -- I don't know. He  
15 wasn't -- it wasn't brought up in the homicide  
16 interview. But Officer Fung just seemed to think he  
17 had something red in his hand and just obviously  
18 assumed it was the pepper spray since the container's  
19 red.

20           UNIDENTIFIED SPEAKER: Just think it could  
21 have been blood.

22           UNIDENTIFIED SPEAKER: Yeah. I think that it  
23 could have been when he got shot, so.

24           UNIDENTIFIED SPEAKER: Is there any other  
25 discussion?

1           We're back to the recommendation.

2           UNIDENTIFIED SPEAKER: I move to accept the  
3 recommendation as -- of this -- of OIS 17-006 as in  
4 policy.

5           UNIDENTIFIED SPEAKER: I second.

6           UNIDENTIFIED SPEAKER: Second.

7           UNIDENTIFIED SPEAKER: So we have a motion  
8 (unintelligible).

9           SGT. CAMPBELL: On the motion to accept the  
10 recommendation in case number OIS 17-006 as in  
11 favor as -- excuse me -- as in policy, all in favor?

12           MULTIPLE SPEAKERS: Aye.

13           SGT. CAMPBELL: All opposed?

14           Motion passes unanimously.

15           Line item 1(c)(2). This is the field tactics  
16 force options analysis, case number 19-008. And this  
17 is in regards to OIS 17-006. Discussion.

18           UNIDENTIFIED SPEAKER: So before we go into  
19 the discussion of the field tactics analysis is that  
20 there's a separation between the -- just want to  
21 clarify, this is -- this is a new area where in the  
22 FDRB now we have these field tactics analyses, force  
23 options analyses. In that -- those -- that analysis  
24 and the internal affairs investigation are two  
25 separate and distinct investigations evaluation

1       analyses. And we want to keep them separate in that  
2       we don't want to -- and that's why we had the IA and  
3       their presentation. And so their presentation, their  
4       investigation, stand on its own based on the  
5       information they have so that we can make a  
6       recommendation. And now that we have these analyses,  
7       we don't want the training analysis to be a part of or  
8       an influence of discipline or in or out of policy.  
9       They're two distinct tracks and that's why there's  
10      separation.

11           Lieutenant Nevin, that's why I was thinking  
12      we can hold off on your analysis until -- till the  
13      panel is able to review and ask the questions about  
14      the internal affairs investigation itself.

15           So just to make it clear, they're two  
16      separate tracks, they're not to be blended, and that  
17      we should be able to make our own -- make our  
18      decisions on whether an incident is in or out of  
19      policy based on the internal affairs investigation.  
20      Obviously now we have the analysis where we always  
21      want to look at every situation and see how can we --  
22      if -- how can we given the opportunity do something  
23      better, how do we help the officers help the community  
24      with these type of situations that happen  
25      (unintelligible), how can we prevent some of these

1 things and how do we best address these things through  
2 training and -- for our members.

3 So just want to -- have to say that, two  
4 separate tracks.

5 UNIDENTIFIED SPEAKER: Thank you.

6 (Unintelligible discussion.)

7 UNIDENTIFIED SPEAKER: Before you get into  
8 this, Mike, Samara, do you in these -- will DPA come  
9 out with policy recommendations that you have in the  
10 past based on discussions out of these?

11 MS. MARION: Yes.

12 UNIDENTIFIED SPEAKER: Similar to like when  
13 we talk about past training failures or -- or --

14 MS. MARION: (Unintelligible.)

15 UNIDENTIFIED SPEAKER: -- or policy failure  
16 or something. Okay.

17 MS. MARION: Absolutely. And these reports  
18 in many ways address some of our previous policy  
19 recommendations. In that way I think we're really  
20 aligned and we are really thrilled to see these  
21 reports. It really does address some of our past  
22 policy recommendations.

23 LT. NEVIN: So just -- I just wanted to start  
24 by saying the unit with all the cases that we are  
25 looking at are all cases that preceded the formulation

1 of the field tactics force options unit in November of  
2 2018. When we came to the last Firearm Discharge  
3 Review Board the -- there was three cases that were  
4 presented. They were reviewed by the FDRB. I'll go  
5 back on those in a bit at the direction we were told  
6 to go back and look at those cases.

7           This case was brought to our attention when  
8 we learned that IAD was gonna be presenting this today  
9 so we had -- we didn't have as much time as we would  
10 like to have. All these cases being that they're  
11 older cases and for us to come on board and look at  
12 them, understand that the timeline coming forward will  
13 be that if in fact there's an incident occurs, these  
14 reviews would happen -- actually happen much sooner  
15 and then we'd be providing material, review,  
16 accordingly.

17           UNIDENTIFIED SPEAKER: Has that been set,  
18 Mike? Timelines, roughly?

19           LT. NEVIN: In terms of when we would review  
20 them? Not completely.

21           UNIDENTIFIED SPEAKER: Okay.

22           LT. NEVIN: But I think that with discussions  
23 with DC Yee and IAD the -- all reports should be  
24 presented to the department and the department can  
25 have that well in advance of an FDRB.

1 UNIDENTIFIED SPEAKER: Okay.

2 LT. NEVIN: That's -- that's what our goal  
3 would be.

4 The first thing I'd like to point out in  
5 this -- in this particular case -- I'm just gonna  
6 scroll down to -- and I'll go over some of the -- some  
7 of the findings.

8 Just to reiterate exactly what DC Yee said,  
9 the review is intended to provide analysis to the  
10 department of training in the area of field tactics  
11 and force options as relevant, practical, consistent  
12 and sound. Our underlying goal and our main goal is  
13 to provide our members with the best training possible  
14 in order to enhance their safety as well as the safety  
15 of those that we serve.

16 So that's -- that's the mind-set that we go  
17 in with when we look at the cases.

18 Sorry. I'm -- we've got some technical  
19 difficulties just with...

20 UNIDENTIFIED SPEAKER: (Unintelligible.)

21 LT. NEVIN: I'd like to start at the bottom  
22 paragraph because I think it's important. In my  
23 experience in looking at officer-involved shootings it  
24 is more than rare that an officer faces a suspect that  
25 is actively tracking and trying to kill them. I've --

1 I've investigated lots of shootings and even though  
2 there might be some type of standoff situation or  
3 shots ringing back and forth, the idea that a -- that  
4 a subject would actively physically move towards an  
5 officer is an extremely rare occurrence.

6           When we looked at this case we were trying to  
7 put ourselves in that mind-set to understand, you  
8 know, the chaotic nature of the situation.

9           So to start off, we believe that Officer Fung  
10 did an excellent job seeking cover, performing an  
11 emergency reload, reacquiring his sights on the  
12 subject during the encounter, a chaotic encounter. He  
13 managed to even turn on his BWC, which impressed us,  
14 the fact that he was able to do that as he -- as it  
15 was able to capture and it did memorialize part of the  
16 incident.

17           Once he was able to reassess and recognize,  
18 you know, his shot target, he was able to engage the  
19 subject. And in fact, when we re-reviewed the BWC, it  
20 was Officer Fung who actually walked up on the subject  
21 and actually began to handcuff him. Which again was  
22 showing that he became very much engaged in the  
23 incident.

24           We look at these incidents in terms of what  
25 we as a training division can do. So one thing that

1 we've done -- and I know I was talking to DC Yee. In  
2 fact, it's -- it's -- I know it's being looked at at  
3 the chief level. It was talked about earlier in this  
4 case. But the idea is is that we would like to remind  
5 our officers that putting out information early and  
6 even pri- -- if they're able to prior to making a  
7 conduct -- a contact is gonna be to their benefit.  
8 Because when these things go the direction they go, if  
9 you're able to put out information over the radio  
10 about what you have and what you're doing, we just  
11 feel that's gonna be in their best interest. So it's  
12 something that we focus on at the training division in  
13 terms of impressing upon our members that -- that if  
14 they're able to do that, it's gonna be to their help.

15           So what our plan is is to put out -- and when  
16 we see topics like this, when we saw this particular  
17 topic, by the way, in several of the cases we looked  
18 at, just I don't talk about today, but it's reminding  
19 officers the importance of putting out the  
20 information. We plan to do that by means of what's  
21 gonna be referred to as a tactical refresher. And it  
22 will be an email to members and it will be something  
23 they can discuss at their lineups or what have you and  
24 then we'll keep a library of that. Certainly happy to  
25 share those refreshers with DPAs as a unit that

1       that's -- that's one of the first things I wanted to  
2       point out regarding -- and that would also, you know,  
3       communication on the radio is also the  
4       communication -- or also, you know, considerations  
5       for, you know, when they would need to turn on BWC.

6                   UNIDENTIFIED SPEAKER: So the first -- the  
7       first tactical refresher is under review by the chief  
8       so --

9                   LT. NEVIN: Thank you.

10                  UNIDENTIFIED SPEAKER: -- it's in process of  
11       (unintelligible).

12                  UNIDENTIFIED SPEAKER: Right.

13                  UNIDENTIFIED SPEAKER: It's like a video  
14       or...

15                  LT. NEVIN: It's gonna be -- it's just --  
16       it's gonna be one -- one page. It's gonna be a  
17       one-page refresher and it's gonna highlight some --  
18       you know, the DBs that are reminding officers about,  
19       you know, you know, as you're going to the scene --  
20       Justin teaches this. As you're getting there, just  
21       the more information you're able to put out and the  
22       actions that you're taking are gonna save you time  
23       when everything hits the fan, such as in this case.

24                  It will point out, you know -- just, you  
25       know, we have old policy related, I think 1.03 and

1       things of that nature. Just getting -- getting in  
2       line with communications. It also benefits the backup  
3       officers. Obviously it's like, hey, you know, we've  
4       got -- one of the examples Justin uses, you know, we  
5       got a traffic stop. We're at 16th and Mission. Well  
6       now the car's rolled down. We're mid block on Mission  
7       between 16th and 17th. And then by the time you get  
8       out of the car, at least if something goes really bad  
9       you have to hit your button 'cause you can't even  
10      speak, that information has been broadcast to your  
11      fellow partners that would hopefully be coming to your  
12      aid.

13           Just to address, you know, first and  
14       foremost, you know, we -- understanding what  
15       Officer Fung was dealing with and based on -- and  
16       based on his statements, you know, about his shooting  
17       platform, we just -- you know, part of our analysis,  
18       you know, did look at the policy. And we teach this.  
19       So I want to just point out, we do teach our members  
20       the language in the general order. To the extent  
21       feasible, officers must take reasonable care, it's a  
22       reasonable care standard, when discharging his or her  
23       firearm so as not to jeopardize the safety of the  
24       public or the officers.

25           So that's something that we teach, we

1 continue to press on because, you know, unintended  
2 targets sometimes do get hit. I will tell you this,  
3 that in my experience, I can think of at least ten  
4 incidents where we've had other people other than  
5 people that we were targeting shot. Most of those  
6 people are police officers. Why is that, do I  
7 believe? Because officers are the ones who are  
8 rushing to the problem whereas most people are just  
9 trying to get away.

10                   So it also speaks to the fact that our  
11 members are putting themselves because they're trying  
12 to help, trying to make the arrest, putting themselves  
13 in a position where (unintelligible). But obviously  
14 it's something that we teach.

15                   Moving -- moving forward. I want to just  
16 really quickly DC Ali's point and just to -- just to  
17 reiterate in terms of the training perspective. So at  
18 the bottom of this paragraph in this section, attempts  
19 were made to de-escalate. And when -- when -- you  
20 know, in terms of the lang- -- the specific language I  
21 believe that you spoke to in terms of -- what was  
22 it -- the time and distance, that would be training  
23 for de-escalation because those words our members are  
24 familiar -- when they hear that, they think  
25 de-escalation. So I would concur with DC Ali's point.

1           In this instance, attempts were made to  
2 de-escalate and to resolve the issue peacefully as  
3 they use their uniformed presence and obviously verbal  
4 persuasion. Once the suspect shot at both the  
5 officers, efforts to de-escalate were no longer  
6 feasible. And the efforts that any of our members  
7 made at that point to actively engage the subject we  
8 would believe would be something that we teach in  
9 training.

10           I don't -- I'm just gonna skip through some  
11 pages and I can go back if somebody has any questions  
12 but I just want to hit the highlights. This isn't  
13 supposed to be necessarily a presentation as much as  
14 of a discussion. So I'll just point out a few other  
15 things and then I'll open if there's any questions.

16           In terms of some of our training, this was --  
17 this was a good case that we were able to look at in  
18 terms of preassaultive indicators. There were some  
19 things happening with the subject inside the car that  
20 I guess you can consider your quote, unquote, normal  
21 contact.

22           So part -- part of our training and something  
23 we would -- that we would look to use this as a  
24 training tool for our members is when those things are  
25 happening, you know, seeking cover or moving to a

1 position that's gonna afford you a better position,  
2 that could be a good time to do it. That also allows  
3 you the ability to call in additional resources to  
4 kind of determine what you have. That's something  
5 that we focus on in training. This would be one of  
6 those cases that we'd be able to show that as an  
7 example.

8           And just to fast-forward a little bit, I will  
9 be making a recommendation. I don't want to forget so  
10 I'll just jump straight ahead to that. In each and  
11 every one of these cases, our recommendation to you is  
12 that we get to sit down with all the members involved  
13 in this and have a tactical debriefing. I've learned  
14 from my own mistakes when members hear or read or see  
15 these things and they don't have the opportunity to  
16 sit down with the people that actually put this  
17 together, that can have a very bad effect on the  
18 members involved in this and the department in  
19 general. So we would request that we get to sit down  
20 with them and talk to them about it and get feedback  
21 from them. Because we don't have all the information.  
22 We didn't interview them. We're just basing our  
23 information off of some reports.

24           And then if information that we glean from  
25 that after that meeting, important meeting happens, we

1 do recommend that we be allowed to put together  
2 training points for cases that we feel are gonna  
3 benefit our membership.

4           So I just wanted to kind of jump ahead a  
5 little bit. That's -- that's something that we --  
6 that we hope to use from this because we think that  
7 every incident -- not every incident but most  
8 incidents are going to offer some type of training  
9 value to not just the members involved but our members  
10 in general.

11           UNIDENTIFIED SPEAKER: Mike, how are you  
12 going to differentiate the discussion with them  
13 between what you will use as a training tool and what  
14 may potentially be used as a policy violation in  
15 administrative? Especially in a short time. If we  
16 are looking to try and do these interviews and have  
17 these reports in an appropriate time for us to have a  
18 positive effect on the officers and the training that  
19 we do, how are you gonna do that if it might impact  
20 what the administrative hearings would be and what may  
21 come out of a hearing that shows out of policy?

22           LT. NEVIN: So that's --

23           UNIDENTIFIED SPEAKER: (Unintelligible) by  
24 one camera or those other things that may come out of  
25 there.

1           LT. NEVIN: We -- we -- that's an excellent  
2 question. Discussed it. Our recommendation is that  
3 unfortunately in cases -- take your case that doesn't  
4 involve an officer-involved shooting. Those are cases  
5 where we implore and encourage our stations and units  
6 and in our unit we've done -- we've been asked to do  
7 some of these as well -- have a debriefing in a much  
8 timelier fashion. Unfortunately, with an  
9 officer-involved shooting, to the nature -- due to the  
10 nature of the investigations we don't believe we can  
11 actually do a formal tactical debriefing with them  
12 until after this process has happened.

13           Now, there's pluses and minuses to that, but  
14 I do believe that the adjudication part has to happen  
15 first before in an officer-involved shooting case we  
16 actually sit down with them and go through all the  
17 points.

18           That would be my recommendation. We're happy  
19 to do it whichever -- whichever direction we have.  
20 But in terms of a formal, where we go through  
21 something like the material that you're seeing here, I  
22 believe it would have to take place after this session  
23 has occurred.

24           UNIDENTIFIED SPEAKER: So you're looking at  
25 having these four instances outside of

1           officer-involved shootings --

2           LT. NEVIN: Yes.

3           UNIDENTIFIED SPEAKER: -- use of force.

4           LT. NEVIN: But -- but I do think, sir, that  
5 there's -- when we see patterns, I don't think there's  
6 anything to prevent us from putting together a  
7 tactical refresher. In fact, we've already done that.

8           UNIDENTIFIED SPEAKER: Right.

9           LT. NEVIN: Right? What we drafted with  
10 DC Yee includes the language about -- about  
11 communications. So we don't need to wai- -- we  
12 didn't -- the DC's working and he reads -- we want to  
13 make sure it's right. So we've already done that.  
14 We're not waiting. You know, we're not trying to jump  
15 ahead. We're not waiting for the approval for that.  
16 We will identify trends and patterns. We think that  
17 we can put out information without talking about a  
18 specific case and then not miss that window of  
19 opportunity. It's gonna take a year or so to actually  
20 do this.

21           So if something is important, whether it's  
22 the bosses tell us. And that's one of the things that  
23 our unit -- like when we hear from you about this is  
24 what we're seeing and at your direction you're saying,  
25 hey, we want you to put something out. For instance,

1 another one in the hopper's ERIW. And so we've  
2 been -- noticed that, hey, in fact, Justin has seen  
3 that out in the field where there's -- there's a good  
4 need to talk about ERIW and the deployment. So we've  
5 already drafted that.

6 UNIDENTIFIED SPEAKER: So Mike, my -- I agree  
7 in what you're saying. My concern is in putting it  
8 out in generalities as far as information for officers  
9 in that portion helps us get that message out. But  
10 when you're talking to the individual officer that may  
11 have been involved in this who is subject to an  
12 administrative hearing --

13 LT. NEVIN: Mm-hmm.

14 UNIDENTIFIED SPEAKER: -- are there concerns  
15 with the association and so forth that the information  
16 that they provide is not going to be used in an  
17 administrative hearing as opposed to putting it out in  
18 generality and what DPA's view is on that. Because  
19 you can -- you have both. You put in generalities, it  
20 doesn't say what I do, what DC Yee did at the scene.  
21 It talks about tactical retraining that we want to  
22 have for our members.

23 But if you're talking to myself and DC Yee  
24 because we were involved in that incident, my concern  
25 may be what information are you getting and will that

1 be used in an administrative hearing against me  
2 because it may be a policy violation that comes out.

3 That's just something for us to --

4 LT. NEVIN: Yeah. Ours -- it wouldn't  
5 be retrain, it would be a refresher. So anything that  
6 we put out would be some -- would be information that  
7 would already be out there. Samara can speak to the  
8 DPA. They had our unit -- you know, they've, you  
9 know, we do know that they've -- they don't need our  
10 unit's review to file cases.

11 UNIDENTIFIED SPEAKER: No, I know.

12 LT. NEVIN: And they've -- they've -- they've  
13 done cases and their department has found not in  
14 policy without -- I mean, this unit obviously is newer  
15 but that's occurred in the past anyway. We just -- I  
16 don't know if that would (unintelligible).

17 UNIDENTIFIED SPEAKER: I appreciate your  
18 concerns and I also think other jurisdictions have had  
19 to deal with it similarly. And I just want to start  
20 by saying that our recommendations for years was to  
21 have this kind of in-depth analysis of a -- of an  
22 incident from the beginning to the end: What did the  
23 officer do right, what was problematic, what applies  
24 systematically maybe or what is unique to that officer  
25 or that incident.

1           So when I read these reports, I was so  
2 impressed and commend the department and the chief  
3 and -- and command staff and this new unit for  
4 conscientiously doing these reports that I think are  
5 excellent. And I think that they're not only -- not  
6 only focused on what went wrong but really  
7 underscoring excellent police work and decisionmaking.  
8 And I would hope that that feedback we can also be  
9 able to go back to the officers separate from -- and I  
10 understand your concern -- separate from any concern  
11 whatsoever about discipline, what the officer says.  
12 And of course, our agency would want nothing to do  
13 with what would be internal discussions between your  
14 unit and those officers. I do not see our agency --  
15 that's the opposite of what our agency does.

16           But when we talk about policy, I think policy  
17 and policy failure again is not unique to the officer.  
18 The officer -- if there's a policy failure, it means  
19 that it's something new and different that hasn't been  
20 addressed through current policies and it's an  
21 opportunity to say -- and to step back and say this is  
22 a unique situation or we've seen these patterns, let's  
23 do A or B, change the Department General Order, issue  
24 a notice or a tactical refresher. And I don't see  
25 that then being disciplinary as to the officer. So in

1 that regard, I think that that's separate.

2           I think when we're talking about the  
3 disciplinary process then our agency, we're doing our  
4 own investigation, we're also working with outside  
5 experts and we're also communicating. There are times  
6 where we're talking to the department about we're  
7 seeing X or Y and we'd like to make a policy  
8 recommendation in a particular area, are you on board  
9 or not. And again, that's not connected with  
10 discipline. I think it's really with the mind-set of  
11 is there ways to improve, are we on the same page  
12 about it.

13           So, but I respect the concern but I think  
14 that we can segregate discipline from the tactical  
15 decisionmaking in this kind of report.

16           That said, there's one aspect though that  
17 we've recommended from the beginning, which is that  
18 this analysis go to IAD before they make their final  
19 decision because I do think there are times where IAD  
20 would look at and have more information about what's  
21 the training, what -- the training that that  
22 particular officer had, what's the training that the  
23 department's providing, and be able to -- there will  
24 be times I think that IAD would say this is a policy  
25 failure or a training failure because of the

1 information that this new unit is providing.

2           And I think that's helpful. I don't think  
3 that that negatively impacts the officer. I think  
4 that it is information that's valuable in the process.  
5 And I think that IAD will make their own decision.  
6 Our agency will make our own decision. But I think  
7 that the information and the work that this new unit  
8 is doing I think not only is it conscientious and  
9 deliberate and looking at both the good and the bad  
10 but it's also consistent with best practice. And I  
11 think that other agencies, they get written reports  
12 from their academy and they're considering it in terms  
13 of discipline, and IAD would be looking at that  
14 information.

15           So my -- my hope and recommendation is that  
16 IAD would get these reports before they make their  
17 final determination.

18           UNIDENTIFIED SPEAKER: To the concern, I  
19 think we can address that concern simply by having a  
20 secondary-the-issue-type debriefing in light of this.  
21 Because invariably, this tactical debriefing that you  
22 want to do is going to conjure up feelings and  
23 emotions and concerns that members may have if we do  
24 it in conjunction. If not, just have a member from  
25 BSU present to address members who may be emotionally

1 affected by this process, I think we -- we -- we  
2 safeguard and -- you know, the confidentiality of all  
3 the discussions so that there's no need for disclosure  
4 at that point.

5 So I think that would be the best -- I think  
6 everyone would be satisfied and I think we'd serve the  
7 members well from listening to the information,  
8 feeling safe to provide the information, and to be  
9 able to address whatever triggers may happen as a  
10 result of this discussion. Just a thought.

11 LT. NEVIN: Unfortunately, Officer Hintzen  
12 because of the incident has since retired from the  
13 agency. We don't have any recommendations for him.

14 Officer Fung has attended the latest CPP  
15 cycle. As you mentioned before I know at the last  
16 one, Monday's CM -- CPP includes a 10-hour critical  
17 mind-set coordinator response course. He has actually  
18 attended that. After we get a chance to talk to him,  
19 we'd love to invite him to a two-day course that we're  
20 putting on. And then, you know, like I said, sit down  
21 and go over this incident with him and discuss some of  
22 the different aspects of it.

23 I don't have anything else regarding this  
24 case that I wanted to point out and I'm happy to  
25 answer any questions.

1                   SGT. CAMPBELL: Next item?

2                   Line item 1(c)(3): Field tactics force

3                   options analysis, case number 19-004. And this is

4                   regarding OIS 18-001. Discussion.

5                   LT. NEVIN: So the next three cases are all

6                   cases that have already been adjudicated through this

7                   panel. This is just --

8                   Justin, you mind? (Unintelligible.)

9                   He's actually got quite a bit to say

10                  (unintelligible).

11                  Sorry. I did but it's...

12                  (Unintelligible discussion.)

13                  LT. NEVIN: Okay. So this -- this officer --

14                  (Unintelligible discussion.)

15                  LT. NEVIN: This -- this officer-involved

16                  shooting was the one on Alameda and De Haro. It was

17                  from February 17th of 2018.

18                  Just a quick backstory on this. This was a

19                  homicide suspect who was -- who had carjacked a truck

20                  and the officers located the truck. There was an RV

21                  parked in front of the vehicle. The officers

22                  descended upon the scene and involved -- ended up

23                  getting involved in an officer-involved and

24                  subsequently taking the subject into -- into custody

25                  later on after it was deemed to be a critical

1           incident.

2           One -- I'll just go -- some of the pages  
3 here. (Unintelligible.)

4           (Unintelligible discussion.)

5           UNIDENTIFIED SPEAKER: Did you want to make  
6 it smaller or is that size okay?

7           LT. NEVIN: I guess, I mean, it's just slow.

8           Yet another reason why (unintelligible) the  
9 materials in advance. Then they can be  
10 (unintelligible) discussion.

11           Just some recommendations in terms of -- in  
12 terms of looking at this case, just starting with  
13 this. We -- you know, there's national standards  
14 regarding high-risk multiple-vehicle pull overs. We  
15 understand this vehicle's already parked but we do --  
16 we do do training at CMCR regarding, you know, vehicle  
17 approaches and vehicle tactics. And vehicle placement  
18 is a big deal because what vehicle placement does is  
19 kind of starts the idea of, you know, where -- where  
20 our members are and where cover's available.

21           You want to speak to (unintelligible)?

22           UNIDENTIFIED SPEAKER: Mike, which shooting  
23 is this again?

24           LT. NEVIN: This is the De Haro and Alameda,  
25 the homicide suspect from the Park District. Yes.

1       The RV shooting.

2           UNIDENTIFIED SPEAKER: So like the deputy  
3 chief saw yesterday, a lot of our issues that we're  
4 seeing tactically is simply the placement of the  
5 vehicles when we initially get there. It creates a  
6 lot of (unintelligible), blue-on-blue issues. And  
7 it's a training issue that we're addressing now at  
8 CMCR. I'm sure people have attended the class. Where  
9 we're initially stopping vehicles either reduces  
10 stress or creates stress based on those concepts.

11          UNIDENTIFIED SPEAKER: (Unintelligible) that  
12 one, wasn't the radio car right behind or...

13          UNIDENTIFIED SPEAKER: It was approached from  
14 behind because -- so in their unique situation, the  
15 car is parked.

16          UNIDENTIFIED SPEAKER: Right. And they  
17 didn't know if anyone was in it at the time.

18          UNIDENTIFIED SPEAKER: We got the tradition,  
19 again, we always do a high-risk vehicle stop from the  
20 rear.

21          UNIDENTIFIED SPEAKER: Right.

22          UNIDENTIFIED SPEAKER: But this was now  
23 parked between two vehicles.

24          UNIDENTIFIED SPEAKER: Right.

25          UNIDENTIFIED SPEAKER: And instead of

1 switching the rotation on the angles, that started a  
2 lot of issues.

3 UNIDENTIFIED SPEAKER: And part of the issue  
4 with this, too, unlike a regular traffic stop where  
5 the subject violator would know that you're there,  
6 they -- nobody --

7 UNIDENTIFIED SPEAKER: Nobody knew.

8 UNIDENTIFIED SPEAKER: -- nobody knew they  
9 were there. They approached the RV, which we find to  
10 be reasonable 'cause they don't know that the guy's --  
11 the RV wasn't listed as a carjacked vehicle. It was a  
12 truck parked behind it. So they don't know. The RV  
13 may or may not be (unintelligible). Well, of course  
14 it turns out that it was. Once they identified the  
15 subject being in there, he still at that point hadn't  
16 been alerted to their presence.

17 So part of our -- what we looked at in terms  
18 of that would be a time to set up, you know, set up  
19 the vehicles appropriately and where the members --  
20 where the members themselves are going to be. That --  
21 that's -- that's what we're looking at.

22 One thing that came up in this, I want to be  
23 clear, we just -- watching BWC, it didn't occur, but  
24 there was discussion about whether or not there should  
25 be forced entry of the RV. It didn't happen. But the

1 reason why we put it in here as part of our analysis  
2 was because we want to continually train our members,  
3 which we do, about understanding when you have a  
4 barricade situation compared to an active -- active  
5 situation and that there's two different minds, two  
6 different --

7 UNIDENTIFIED SPEAKER: Thoughts.

8 UNIDENTIFIED SPEAKER: -- concepts of dealing  
9 with that. And they -- like I said, they didn't --  
10 they didn't breach the door as there was some  
11 discussion. But we felt it was a good opportunity to  
12 play out, hey, it's a good reminder in terms of why  
13 you wouldn't necessarily in that case want to do that.

14 UNIDENTIFIED SPEAKER: Okay.

15 UNIDENTIFIED SPEAKER: I want to talk a  
16 little bit -- a little bit about some range training.  
17 So specifically in terms of maintaining disciplined  
18 fire, we have Kirk representing the range  
19 (unintelligible).

20 You want to just talk briefly about, you  
21 know, in terms of fire discipline, some of the  
22 training that we do at the range on a regular basis in  
23 terms of just how it's the backdrop and things of that  
24 nature that you --

25 UNIDENTIFIED SPEAKER: Sure.

1           So like we always instill in officers, you  
2 have to be aware of your backdrop. (Unintelligible)  
3 target, keep your finger off trigger. Just the basic  
4 safety things. We always keep the strings of fire. I  
5 think the most rounds the officers fire during any  
6 string of fire at the qualification's only five  
7 rounds, so we're not encouraging or in the academy,  
8 hey, shoot empty, something like that. Always be  
9 aware of your target so you can identify your target  
10 and it's a threat to fire.

11           So I know Sergeant Callaway's probably  
12 addressed this numerous times about trying to get the  
13 target so they have threat/no threat targets.  
14 Officers next to each other after identifying what  
15 their target's doing versus just watch targets,  
16 targets turn, everybody just start shooting, get  
17 through that string of fire 'cause that's just not  
18 giving officers any time to think, especially under  
19 some type of stressful situations (unintelligible).

20           So we're doing some more training in the  
21 beginning of quals which seems to be working out. It  
22 seems to be helping officers. Also reiterates ideas  
23 of safety, like finger off a trigger. Hey, you're  
24 scanning now, you're looking for more threats, you're  
25 trying to assess if this target's down or up or still

1 a threat. You know, just kind of constantly  
2 instilling just the safety side of it and identifying  
3 your threats and -- you know. To be -- because a lot  
4 of people find pressure under the quals. It helps  
5 them kind of think during the pressure of a qual.

6 UNIDENTIFIED SPEAKER: Thank you.

7 Speaking of Sergeant Callaway, I want to  
8 point out that the next three cases not -- we did not  
9 have time to do it with the -- the Diamond Street  
10 shooting that we talked about earlier. But on  
11 September 5th we met at -- the field tactics force  
12 options met with Sergeant Anderson from CIT,  
13 Sergeant Laura Colin from CIT, Alan Callaway from the  
14 range, Sergeant Crudo from FTFO, who works with me,  
15 Sergeant Steve Pomatto, who's PTDT, and Officer Joel  
16 Aylworth and Pat Woods, who both work at the academy  
17 with us. So we did have a meeting. We discussed  
18 these reports with all those folks.

19 One thing that happened in this incident was  
20 that officer on BWC can be seen falling down. His  
21 member officer believed he actually got shot. So we  
22 put a recommendation in there as we continue to do  
23 which I've seen it, it's actually the first  
24 exercise -- or I shouldn't give that away  
25 (unintelligible).

1                   UNIDENTIFIED SPEAKER: (Unintelligible.)

2                   UNIDENTIFIED SPEAKER: It's one of the first  
3 exercises at CMCR where we do officer down drills.  
4 And the first thing they roll up on is an officer  
5 down. And how do they extract that officer from the  
6 scene and then still deal with the threat that hasn't  
7 gone away.

8                   So that happened in this and it just was a  
9 good reminder for us when we looked at this case that  
10 we need to continue to do that.

11                  I should point out, like I did in the other  
12 case, we have a whole page here about things that  
13 worked well. We want to make sure that we're not  
14 always focused on what could be better. But the  
15 officers -- you know, this was a homicide suspect who  
16 had killed somebody recently and eventually ends up  
17 shooting at them. But they -- they realize that they  
18 didn't -- you know, I think that, you know, to give  
19 them credit, they talked about maybe going up to the  
20 door. But then they didn't and they put -- they were  
21 talking plan with one another. That's all great  
22 stuff. They were giving safe avenues of approach for  
23 responding units. They did -- one of the vehicles was  
24 positioned in a good spot. We think we could have  
25 moved other vehicles in there, such as maybe even

1 blocking in the RV in the event that they decided to  
2 leave.

3 They had -- they formulated an arrest team,  
4 they had one officer armed with a less lethal 40 mm,  
5 which we're starting to see more of officers. Not --  
6 everybody doesn't need to have a long gun or a  
7 handgun. There's other roles for people to play. And  
8 so there's -- there was -- there were those -- there  
9 were those things that (unintelligible).

10 It's also important to point out that these  
11 were all Q2s. Supervisors had not yet arrived on  
12 scene. They had come later. A command post was  
13 subsequently set up. But it's one of the things that  
14 we're training at trainings. We're telling the Q2s  
15 like you need to be the team leader. You know, you  
16 need to -- you know, there may not -- you know, by the  
17 time people get there, it may take a little while. So  
18 we're encouraging our members at all ranks and at all  
19 experiences, whether you're day one out of the academy  
20 or day -- you know, year 20, is that, you know, people  
21 need to take leadership roles and form plans and put  
22 team leaders together. And they -- I felt that they  
23 did. They did a lot of good stuff in relation to  
24 that.

25 UNIDENTIFIED SPEAKER: In that instance

1 there, correct me if I'm wrong, they were all Northern  
2 units in the Southern, correct? Can you point that  
3 out?

4 UNIDENTIFIED SPEAKER: (Unintelligible.)

5 UNIDENTIFIED SPEAKER: They --

6 UNIDENTIFIED SPEAKER: Go ahead.

7 UNIDENTIFIED SPEAKER: There were Northern  
8 units that had gone to De Haro.

9 UNIDENTIFIED SPEAKER: Looking for -- right,  
10 okay.

11 UNIDENTIFIED SPEAKER: They were dropping  
12 something off, they spotted the car. And they were in  
13 a different district, on different channels.

14 You want to talk to that?

15 UNIDENTIFIED SPEAKER: (Unintelligible) a  
16 Northern unit still on A-6.

17 UNIDENTIFIED SPEAKER: Right.

18 UNIDENTIFIED SPEAKER: In the Southern or --  
19 that's the -- obviously the perfect (unintelligible)  
20 A-4 or (unintelligible) Southern. But they  
21 broadcasted on A-6, which they created more issues.

22 UNIDENTIFIED SPEAKER: (Unintelligible) you  
23 guys -- that's something I think -- part of that is  
24 addressed.

25 UNIDENTIFIED SPEAKER: (Unintelligible.)

1 UNIDENTIFIED SPEAKER: Yeah.

2 UNIDENTIFIED SPEAKER: Okay, good.

3 UNIDENTIFIED SPEAKER: This is a real lengthy

4 one and you-all would not appreciate me going through

5 each and every page. But I thought we'd get --

6 UNIDENTIFIED SPEAKER: No, no, no, that's

7 fine. I was out there that night and I know that

8 there was certain things at that time. But it sounds

9 like you're -- you looked at a lot of those different

10 things.

11 UNIDENTIFIED SPEAKER: Yeah.

12 UNIDENTIFIED SPEAKER: In looking through

13 CMCR and the other things of how to address those,

14 from supervision all the way down to radio

15 communication, where you were (unintelligible).

16 UNIDENTIFIED SPEAKER: I can say with

17 certainty that in a case like this is the -- is --

18 gives us a lot of meat on the bone for CMCR. And they

19 get inundated with multiple officers responding to a

20 scene like this where it's static for some time but

21 then they have to be realistic that it may not stay

22 static. And what are you doing and how are you

23 planning, how are you moving and what roles are coming

24 up. So this -- this case reinforced what we're doing

25 in terms of the need to do it.

1           Some of the people involved in this  
2 incident -- which we have not done a formal debriefing  
3 yet, which again, we'd recommend that we be able to  
4 do -- they have taken ownership of CMCR and are some  
5 of our role players in CMCR.

6           UNIDENTIFIED SPEAKER: Which just goes to  
7 show that I think what we're doing with regards to our  
8 training is getting folks like -- who are involved in  
9 things like this to want to be a part of it.

10          UNIDENTIFIED SPEAKER: And I'm just going  
11 to -- this -- there's three pages at the very end.  
12 I'm not gonna go through everything. I'm just  
13 gonna -- again, I think I already highlighted this.  
14 But -- but just one of the recommendations we made  
15 is -- is to -- prior to calling suspect back, consider  
16 the preplanning, gathering all your assets.

17          There were -- when people had come out of the  
18 RV, there was -- there were -- there were other people  
19 that came out along with a dog, which always throws --  
20 I mean, dogs -- dogs are tricky and barking and  
21 nipping at people. So we did talk about, you know,  
22 the planning processes. If we're able to move those  
23 people maybe back further, somehow deal with the dog.  
24 Obviously we don't want them to leave. They're gonna  
25 provide us intelligence.

1           Because the guy -- what happened was the guy  
2 barricaded himself in before he started shooting.  
3 He's no longer a barricade suspect; he was until he  
4 decided to start shooting. Then we don't consider  
5 that a barricade suspect anymore. That's an active  
6 attacker.

7           So, but we had talked about -- that was our  
8 main focus when we reviewed this case in terms of the  
9 preplanning, getting your assets in place, setting up  
10 perimeters, designating particular teams, making sure  
11 that the vehicle's got nowhere to go if you're able to  
12 safely place another vehicle to block it in. So those  
13 were -- that's --

14           I think if you want to add anything to that,  
15 (unintelligible).

16           UNIDENTIFIED SPEAKER: (Unintelligible) call  
17 for a suspect out of a building or out of an RV,  
18 expect people to come out. And then what do you do  
19 with these people. Have an arrest team set, have an  
20 actual location (unintelligible) detained  
21 (unintelligible) safe area. 'Cause when that shot  
22 rang out, that created more stress. (Unintelligible)  
23 as well. It's again about that timeline. Calling the  
24 suspect out, then just deal with that suspect  
25 (unintelligible) react to whatever else

1 (unintelligible).

2 UNIDENTIFIED SPEAKER: Any questions?

3 SGT. CAMPBELL: Next item: 1(c)(4): Field  
4 tactics force options analysis, case number 19-006,  
5 regarding OIS 16-001. Discussion.

6 UNIDENTIFIED SPEAKER: Here we go again.

7 UNIDENTIFIED SPEAKER: Mike, why don't you  
8 just go off the paper.

9 LT. NEVIN: Okay. Thank you, sir.

10 This -- this case was --

11 Samara, (unintelligible).

12 MS. MARION: I do.

13 LT. NEVIN: This case is -- involved  
14 451 Shotwell Street, April of 2016. This was a case  
15 where Mission officers were dispatched on a call from  
16 a homeless outreach team regarding a subject who may  
17 have been altered mental status who was on the  
18 sidewalk. Officers -- an officer responded. He was a  
19 field training officer but his recruit was back at the  
20 station, I believe writing a report, and he responded  
21 to the scene. Officer Maloney, along with  
22 Sergeant Steger, who backed him up. They were the --  
23 they were the first units on scene. Again, this  
24 was -- this case has already been adjudicated to this  
25 panel and I under- -- and obviously, DPA's aware of it

1 as well.

2           So we looked at this case. We looked at the  
3 response, the findings. As Sergeant Crudo when he  
4 presented this at the last FDRB talked about, the  
5 findings did not -- did not find at that point that --  
6 you know, we looked at the ERIW analysis in terms of,  
7 you know, you're required to have a lethal cover.  
8 When Officer Maloney arrived on scene, he had a less  
9 lethal but he didn't have a lethal cover because,  
10 again, his partner, which would have been his recruit,  
11 was back at the station.

12           Sergeant Steger took over the role as -- as  
13 the lethal cover. I -- we looked at the fact that  
14 he's a sergeant and we spoke -- we spoke at length  
15 about that when we met -- when we met as a review  
16 panel. The majority of the panel believed that his  
17 role at that point was an active role and that he  
18 was -- he was providing a lethal cover for  
19 Officer Maloney.

20           We expected he would have to assert himself  
21 and change -- transition into the role of a  
22 supervisor, yeah, we believe so. But we don't believe  
23 that the time afforded to him could have reasonably  
24 had that occur.

25           So our -- when we looked at that particular

1 part of it, we believe that as an active participant  
2 that we didn't think that we could reasonably hold him  
3 necessarily more accountable as a supervisor at that  
4 time. However, if time had presented itself, then  
5 expectations would have changed. So that was part of  
6 the discussion that we had.

7           The -- the CIT was a part of our review for  
8 this. There was some statements made by the officers  
9 about the need to de-escalate by getting the knife out  
10 of the hand of the subject. CIT training does not  
11 neces- -- does not require that. Officers are -- are  
12 taught that they can -- they can attempt to  
13 de-escalate and talk, communicate with the individual.

14           So one of the issues that we had with the  
15 tactics specific to that had to do with, you know, was  
16 the officer posit- -- was the officer positioning in a  
17 good spot. We believe that it could have been a bit  
18 further back. There was -- there was -- when you look  
19 at the video, there was some -- there was some items  
20 that could have been used that could have produced  
21 some type of cover, just allow a little bit -- again,  
22 we were at the de-escalation part of this at the  
23 beginning and creating some distance with the ERIW.  
24 Giving -- giving warnings was something that we --  
25 that we looked at in terms of recommendations

1 regarding this.

2           Those are some of the main points.

3 (Unintelligible.)

4           UNIDENTIFIED SPEAKER: (Unintelligible)  
5 expectation to take leadership and supervise. But the  
6 time afforded by the suspect (unintelligible) hectic  
7 scene (unintelligible) another officer  
8 (unintelligible), his perception, his angles, what he  
9 sees now that the officer's deploying ERIW rounds. He  
10 has to then process that part (unintelligible) cover.  
11 (Unintelligible), et cetera. But the suspect's  
12 actions dictated reaction (unintelligible).

13          LT. NEVIN: Officer Maloney has since left  
14 the department so we didn't have any recommendations  
15 in terms of any -- any -- well, there may have been  
16 some, actually, but I'm not gonna speak to that.

17          Sergeant Steger is still with the department.  
18 He has taken a CIT but we found out from the CIT  
19 coordinators that he took an older version. So one of  
20 the recommendations that we would have is for him to  
21 take the newer 40 hour. They've made some changes to  
22 it just since 2016. So he had taken it prior to that.  
23 So along with a debriefing with him that we would hope  
24 to do, we think that that in this particular case  
25 could prove valuable for our member. As well as he

1 has also taken a 10-hour CMCR. We would -- we would  
2 also recommend that we get him into a two-day CMCR as  
3 well.

4 I'm happy to answer any questions about this.

5 UNIDENTIFIED SPEAKER: I have a question  
6 especially concerning moving forward around the issue  
7 around the supervisor coming on the scene. Because at  
8 the time of this incident, the department bulletin had  
9 been issued for five years. You know, when Chief Suhr  
10 came -- became chief, the first thing he did was issue  
11 the department bulletin that said if you've got an  
12 arms -- an armed individual where there's an  
13 indication of any kind of mental health crisis, you're  
14 to take time/distance and you're to call a supervisor  
15 and the supervisors get on scene and take command of  
16 the scene. And there was even training provided to  
17 DEM in a training bulletin. And that's back in 2011.

18 So every two years that department bulletin  
19 had been reissued. So by the time this incident  
20 happened, there was -- it was a third version. But  
21 it's the same department bulletin saying you get a  
22 supervisor on scene and that supervisor's to take  
23 command.

24 There was also then another department  
25 bulletin around pointing your weapon. And that

1 department bulletin then also reiterated if it's a  
2 mental health crisis, you get a supervisor on the  
3 scene and that supervisor takes charge.

4 So we've got five years which I would have  
5 thought there was training for supervisors that  
6 supervisors get on scene and they take charge.

7 So I understand in this case, you know, what  
8 the analysis is. But looking -- moving forward, my  
9 concern is do you feel now that the training does  
10 address that and that there's sufficient scenarios so  
11 that officers who are in supervisor roles know that  
12 they're getting on scene, not moving into being an  
13 active participant but doing what we want them to do,  
14 which is to pull that person back. And that's -- you  
15 know, most certainly Sergeant Pomatto, that was his  
16 perspective of get that -- get that sergeant or the  
17 supervisor on scene and to really take control.

18 So my question ultimately is the concern of  
19 do -- are the scenario-based training and enough  
20 training concerning supervisors that everyone feels  
21 confident that this -- there won't be a repeat of this  
22 and that officers are getting the tools that they  
23 need.

24 UNIDENTIFIED SPEAKER: Okay. I think we have  
25 two points to that. I'll let him talk to the training

1 part of it.

2           Correct me if I'm wrong, but the way I would  
3 interpret the bulletins that you're referring to is  
4 the ideal situation. Or not ideal but a situation  
5 that it's referring to would be officers show up on  
6 the scene, they identify what they have, they call for  
7 a supervisor.

8           In this case Sergeant Steger arrived on the  
9 scene with the first responding unit, didn't even --  
10 they didn't communicate. Saw -- then realize that the  
11 unit had an ERIW and was approaching the subject.

12          I would hope that supervisors in our  
13 department understand that yes, while they're  
14 supervisors, there are times also that they may not  
15 have the luxury of waiting for that other unit to be  
16 the lethal cover.

17          The key about the ERIW is that we train our  
18 members that you cannot utilize -- and I understand  
19 Officer Maloney is accountable for that, it's his  
20 responsibility to ensure that he has a lethal cover.  
21 But if another officer doesn't do that, am I gonna as  
22 a supervisor sit back and wait for that third officer  
23 to get there and then just sit back and  
24 (unintelligible). I don't think that we would  
25 necessarily train specifically to that. We would --

1 we would expect that the officer regardless of rank if  
2 they come upon a scene where their police duties are  
3 going to require their actions, we'd expect you to do  
4 that.

5 I think you can chew gum and walk at the same  
6 time. I think that you can be a sufficiently good  
7 supervisor and do a lot of things and multitask.  
8 That's what we expect our members to do. But in terms  
9 of talking about the DBs, I do think that when they  
10 are written they are written in the sense that they're  
11 talking about officers -- okay, I get to the scene,  
12 this is what's happening. Now the supervisor comes a  
13 couple minutes later. As opposed to something like  
14 this where they just all got there at the exact same  
15 time.

16 And we did talk about had time allowed  
17 itself, the expectations for the roles would have been  
18 different.

19 UNIDENTIFIED SPEAKER: I think one thing that  
20 she's alluding to though is -- and this goes back to  
21 being -- the multitask. Part of CMCR --

22 UNIDENTIFIED SPEAKER: Yeah,  
23 (unintelligible).

24 UNIDENTIFIED SPEAKER: -- (unintelligible) is  
25 that you don't have to be a sergeant to take that role

1 because there may not always be one there. But I  
2 think part of it is as we are giving this training  
3 to our sergeants, are we having the discussion about  
4 that they are expected to as best they can multitask.

5 So in an instance like this, even though he  
6 knows he's the lethal cover for the officer who's got  
7 that, is he or she thinking about also what is their  
8 role as a supervisor on -- on what is -- and how to do  
9 that and can you -- can you do that at the same time.  
10 I think it's more of a discussion, you know, with  
11 them. Because the expectation is the supervisors have  
12 that responsibility of doing both those. We teach it  
13 for the officers but do we -- do we -- are we doing  
14 stuff in the training for that so that the sergeants  
15 know that when you're there, if you have the ability,  
16 your job is to, if you can, look at it from the  
17 30,000-foot level and look at the ones that are there  
18 versus being involved in it. If you can't, you can't.  
19 But --

20 UNIDENTIFIED SPEAKER: Absolutely.

21 UNIDENTIFIED SPEAKER: Okay.

22 UNIDENTIFIED SPEAKER: That is what we're  
23 training. In fact, I need him to speak to this  
24 because he's the -- he's the -- he's the expert. We  
25 are training our sergeants and supervisors at the CMCR

1       that you can holster your weapon, too, and be behind  
2       the scenes. And that is an eye opening because  
3       there's sufficient firepower or defenses in front of  
4       them to where they can't manage very well.

5                  We've seen in the training when they're --  
6       appropriately, by the way -- drawing their firearm  
7       because of what's happening. And then as the  
8       resources are coming on the scene and they're  
9       directing resources, now they're, wait a minute,  
10      just -- I don't need this. And then they're actually  
11      able to supervise much better. So we've seen -- I've  
12      seen it myself in the training.

13                 So Justin, I want you to speak to exactly  
14      what that -- what the DC's point is.

15                 UNIDENTIFIED SPEAKER: (Unintelligible) more  
16      of a background also. CIT tactic instructors and I  
17      talk -- majority of the police department before they  
18      even graduate. So a lot of the same concepts. The  
19      need for leadership (unintelligible) empowering  
20      officers to take leadership 'cause what we're seeing  
21      now is everyone wants to be the active role, no one is  
22      taking that 30,000-foot view, seeing the big picture.  
23      Again, just simple little things like placement of the  
24      vehicle. How can we fix this as a whole.

25                 So the emphasis has been going on for --

1 especially with CMCR it started -- the first iteration  
2 started last -- one year next month. Or next week,  
3 rather. Regarding leadership at scene. The biggest  
4 part that we see is remove yourself at that moment, at  
5 the active role, when there is sufficient cover,  
6 sufficient units. Literally telling officers  
7 (unintelligible) and then how that then reduces your  
8 stress level. See the bigger picture and then take  
9 leadership and see what are the priorities. 'Cause  
10 there's so much focus on pointing their gun at that  
11 suspect and creating that tunnel vision, that stress  
12 (unintelligible) selective attention (unintelligible)  
13 as opposed to the bigger picture. Having -- again,  
14 focusing on leadership at scene.

15 Deputy Chief saw yesterday's -- we literally  
16 have sergeants or whoever's in charge take a step  
17 back, take a breath and see (unintelligible). So  
18 that's one thing our training is currently geared for.  
19 So we're asking for confident. And we're confident  
20 that the training hopefully creates this culture  
21 change in tactics.

22 UNIDENTIFIED SPEAKER: I didn't have anything  
23 else (unintelligible).

24 SGT. CAMPBELL: Next item: 1(c)(6). It's  
25 DPA comments in regards to line items 1(c)(1) through

1 (c)(5). Discussion.

2 UNIDENTIFIED SPEAKER: I appreciate being  
3 able to comment throughout (unintelligible).

4 SGT. CAMPBELL: Shall we open the door?

5 UNIDENTIFIED SPEAKER: There was one other --

6 SGT. CAMPBELL: Oh. Did I skip it?

7 UNIDENTIFIED SPEAKER: (Unintelligible.)

8 SGT. CAMPBELL: Five?

9 UNIDENTIFIED SPEAKER: Or we'll have to do it  
10 again.

11 SGT. CAMPBELL: All right. 1(c)(5): Field  
12 tactics force options analysis, case number 19-007  
13 regarding OIS 18-004. Discussion.

14 UNIDENTIFIED SPEAKER: I don't believe this  
15 will take long.

16 O'Farrell and Webster streets. Officer/FTO  
17 and a recruit officer responded on view to  
18 (unintelligible) to what they believed to be an auto  
19 boost in progress. They -- they moved towards the  
20 subjects that they believed to be committing an auto  
21 boost. Turns out that they were.

22 We -- again, this was another case we had  
23 talked about earlier, about getting information,  
24 communications over the air sooner. They had seen the  
25 subject from a block -- you know, across the street.

1 Would have been a good opportunity to put out  
2 information sooner because the first radio  
3 transmission was a foot pursuit.

4 We talked a little bit about it was a recruit  
5 officer that chased the -- was involved in the foot  
6 pursuit. He was in the third phase. I talked to the  
7 field training office just to get clarification on  
8 what's the expectations of a recruit officer in third  
9 phase and would they be able to handle a foot pursuit  
10 on their own if in fact the training officer was  
11 staying with another subject at the scene. It would  
12 be expected that a person in third phase would be able  
13 or should be able, rather, to accomplish being  
14 involved in a foot pursuit.

15 That's not to say that -- you know, obviously  
16 the communication between the recruit and the field  
17 training officer can take place. They can make  
18 another determination what needs to be. But we didn't  
19 find any information regarding that being improper.  
20 In fact, the recruit did a -- did a good job in terms  
21 of the foot pursuit part, getting to the car and  
22 actually recognizing the fact that the subject had  
23 gotten -- going into the vehicle. And rather than  
24 trying to get engaged with that vehicle, get involved  
25 with that subject as he was getting into the vehicle.

1       We thought it was good that that didn't happen because  
2       that could be a bad thing getting into a car with the  
3       guy that's trying to get away. And next thing you  
4       know, now you're caught up in the car.

5                 But one of the things we pointed out was that  
6       by not updating dispatch about what was happening,  
7       what the subject was doing, may have prevented the  
8       opportunity for another backup unit who did actually  
9       arrive shortly thereafter to possibly block the  
10      vehicle in because it had not yet started and it could  
11      have been an opportunity to prevent what later became  
12      a police pursuit.

13               So we talked -- part of our analysis has to  
14      do with 5.05. And officers now, which didn't always  
15      used to be the case, have the ability to block in a  
16      vehicle that's wanted for a felony in order to try to  
17      prevent its escape.

18               This case was already adjudicated through  
19      this panel and through IA and determined -- I'm not  
20      giving away anything, but the shooting was not in  
21      policy.

22               I just want to talk to the training regarding  
23      that. The officer had articulated that what his  
24      belief to be in terms of what the threat was presented  
25      by the subject. We train our officers all the way

1 from basic all the way through advanced officer  
2 training that Penal Code 198 talks about bare fear and  
3 that they have to -- you know, that the  
4 circumstances must -- there must be some overt act or  
5 some -- it needs to be basically a reasonable fear in  
6 terms of what you articulate. And it's just not good  
7 enough to say I believe this could have been  
8 happening; you need to have other supporting  
9 information to believe that to be the case.

10           So we do focus on that in force options  
11 simulations training where officers are advised like,  
12 hey, you know, is the fear sufficient enough for  
13 the -- for the level of force that you're applying.

14           So those were the -- those were the  
15 highlights from that case.

16           UNIDENTIFIED SPEAKER: A question. I  
17 wondered in light of this case and other situations  
18 where individuals are fleeing the scene if you're  
19 considering doing a tactical memo about blocking in  
20 vehicles. I didn't know if that's on the horizon.

21           UNIDENTIFIED SPEAKER: (Unintelligible.)

22           UNIDENTIFIED SPEAKER: That can be on the  
23 horizon. But again, that -- 5.05 has addressed that  
24 CMCR once again using roadblocks, spike strips, giving  
25 vehicles a tactical tool.

1           UNIDENTIFIED SPEAKER: So what he's talking  
2 about, we are training it. We can consider doing a  
3 refresher.

4           UNIDENTIFIED SPEAKER: From the perspective  
5 of seeing that pattern, I think it would be well worth  
6 it to do that.

7           I do want to raise one thing that wasn't  
8 raised in your report but I just -- we talked about it  
9 the last time concerning this case. Which is that it  
10 started out as a car burglary, that prints were never  
11 taken, CSI did not -- it was not seen as a crime  
12 scene, unfortunately, yet there was a suspect who  
13 ultimately -- two suspects who were ultimately  
14 prosecuted.

15          And I raised it last -- you know, the last  
16 time this case was here as to that's another aspect of  
17 this case that I think is important. When it's a case  
18 that ultimately there's suspects, it's gonna --  
19 there's gonna be a criminal prosecution, that there be  
20 whatever needs to be in place to be assured that the  
21 original crime scene is preserved, that CSI comes out,  
22 that prints are taken and that that -- in this  
23 particular case, that didn't happen.

24          And I -- and I -- I mentioned it last time  
25 and there was a discussion about what -- following up

1 on it. And most certainly I know you're dealing  
2 with -- you know, you're dealing with tactics and  
3 force issues. This is a separate kind of issue. But  
4 I don't want it to -- you know, I just don't want it  
5 to be left unaddressed.

6 There might have been reasons why -- why CSI  
7 didn't come out and take -- take prints. You know,  
8 supposedly or reportedly the victim said -- you know,  
9 when two officers spoke with the victim and the victim  
10 said nothing was taken from my car and supposedly the  
11 victim said he didn't want any prints taken. But  
12 nonetheless, it's a crime scene and in light of an  
13 officer-involved shooting and it's gonna be  
14 prosecuted, to me that's an essential part of -- of  
15 good policing. I know what happened, but again, I  
16 just don't want it to fall through the cracks.

17 UNIDENTIFIED SPEAKER: I think that that  
18 would be something we would take outside the scope of  
19 this panel. I get what you're saying. And yes, the  
20 crime scene investigation, the investigation itself,  
21 should be thorough and complete.

22 The purview of this panel is whether the  
23 officer-involved shooting was in or out of policy. So  
24 we can take it offline. I think we -- it doesn't need  
25 to be calendared within this panel, that's what I'm

1 saying. We can take it offline.

2 UNIDENTIFIED SPEAKER: Just with all due  
3 respect, from our agency's perspective when we're  
4 analyzing an officer-involved shooting, it does  
5 involve from the beginning to the end. And if there  
6 are issues that have to do with the management of the  
7 crime scene or the OIS that that's just -- that it is  
8 an issue that this is -- unfortunately, this is I  
9 think really the only place it can be addressed.

10 So again, from my perspective, I just don't  
11 want it to fall through the cracks. If we have an  
12 opportunity to resolve what happened and make sure it  
13 doesn't happen in the future, I just want -- I would  
14 like to have some process by which we address it. And  
15 right now, in this moment of time, I know no other  
16 place except here, so.

17 UNIDENTIFIED SPEAKER: Noted.

18 UNIDENTIFIED SPEAKER: (Unintelligible.)

19 UNIDENTIFIED SPEAKER: Move to move from  
20 closed session (unintelligible).

21 SGT. CAMPBELL: I think we open the door and  
22 then we make that vote in open session.

23 And we are back on the record in open  
24 session. Line item 1(d): Vote whether to disclose  
25 any or all of the discussions held in closed session

1 pursuant to SF Administrative Code Section 67.12(a).  
2 Action item.

3 UNIDENTIFIED SPEAKER: I move that we not  
4 discuss anything that was discussed, not to reveal  
5 anything discussed in closed session.

6 UNIDENTIFIED SPEAKER: Second.

7 SGT. CAMPBELL: On the motion not to disclose  
8 items discussed in closed session, all in favor?

9 MULTIPLE SPEAKERS: Aye.

10 SGT. CAMPBELL: All opposed?

11 Hearing none, the motion passes.

12 Is there a motion to adjourn?

13 UNIDENTIFIED SPEAKER: I make a motion to  
14 adjourn.

15 UNIDENTIFIED SPEAKER: Second.

16 SGT. CAMPBELL: All in favor?

17 MULTIPLE SPEAKERS: Aye.

18 (Unintelligible discussion.)

19 (End of transcription.)

20

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